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FEDERAL COMMUNICATIONS COMMISSION  
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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Applications of	)	MM Docket No. 99-153
	)	
READING BROADCASTING, INC.	)	File No. BRCT-940407KF
	)	
For Renewal of License of	)	
Station WTVE(TV), Channel 51	)	
Reading, Pennsylvania	)	
	)	
and	)	
	)	
ADAMS COMMUNICATIONS	)	File No. BPCT-940630KG
CORPORATION	)	
	)	
For Construction Permit for a New	)	
Television Station to Operate on	)	
Channel 51, Reading, Pennsylvania	)	

To: Administrative Law Judge  
Richard L. Sippel

ENFORCEMENT BUREAU'S OPPOSITION TO  
REQUEST FOR LEAVE TO APPEAL

1. On February 7, 2000, Adams Communications Corporation ("Adams") filed a request for leave to appeal ("Request"). Adams seeks permission to appeal

Memorandum Opinion and Order, FCC 00M-07, released January 20, 2000 ("MO&O").

Therein, the presiding Administrative Law Judge ("ALJ") added the following issues:

To determine whether Adams Communication Corporation has abused the Commission's comparative renewal processes by the filing of a broadcast application for speculative and/or other improper purposes.

To determine whether such allegations of an abuse of process, if true, disqualify Adams Communications Corporation from receiving a Commission license.

By Order, FCC 00M-15, released February 14, 2000, the due date for responsive comments from Reading Broadcasting, Inc. ("RBI") and the Enforcement Bureau

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("Bureau") was extended to February 16, 2000. In accordance with the Order, the Bureau submits the following opposition to Adams' Request. In this regard, although the Bureau believes the Request should be denied, the Bureau concurs with Adams that the first issue should be modified as specified herein.

2. Background. By a motion to enlarge issues filed November 2, 1999, RBI sought to have Adams' application dismissed or, in the alternative, to have an abuse of process issue added to this proceeding. RBI premised its motion on two alleged flaws in Adams' behavior, only one of which is pertinent to the instant Request. Specifically, RBI contended that Adams' application was filed for an improper purpose. After reviewing the available information, the Bureau opined that addition of an abuse of process issue would appear appropriate unless Adams provided a detailed and documented explanation that evidenced a *bona fide* desire to operate Channel 51 in Reading. Following review of Adams' opposition, the Bureau opined that Adams had done little to dispel the inference that it had made little or no effort to assess the quality of WTVE's community service prior to the time Adams filed its application. Nevertheless, the Bureau concluded that the circumstances surrounding the filing of Adams' application and its subsequent behavior differed enough from the circumstances present in WWOR-TV, Inc., 6 FCC Rcd 1524 (1991) (subsequent history omitted) that addition of the requested issue was not appropriate. However, after reviewing the pleadings and hearing testimony from Adams' principal, Howard N. Gilbert ("Gilbert"), the presiding ALJ added the issues noted above.

3. Discussion. Section 1.301(b) of the Commission's rules provides that an appeal from an interlocutory ruling such as the one under consideration can occur only if allowed by the presiding ALJ. The request to allow an appeal must "contain a showing

that the appeal presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception.” *Id.* Should the presiding ALJ determine that an interlocutory appeal is justified, he may either allow the appeal or modify the underlying ruling.

4. Adams’ Request arguably presents a new or novel question of law or policy. In this regard, the first added issue does not appear to be limited to purposes proscribed by statute<sup>1</sup> or case law.<sup>2</sup> Rather, the issue seeks to determine whether Adams had not only a “speculative” purpose, but also “other improper purposes.” However, the apparent reason for adding the issue is a concern that Adams’ application was filed for the purpose of achieving a settlement agreement involving the payment of money from RBI to Adams. MO&O, at ¶ 24 (“There is a substantial question of whether the Adams principals were motivated to file by the possibility of settlement since the Adams principals believed that there was a possibility that Adams could achieve its adoptive public interest goal through this challenge whereby Reading would drop, change or modify its home shopping format and offer a reasonable cash settlement which could be limited to expenses....”) If such is actually the case, the issue should be so framed. If the presiding ALJ believes there is another purpose for Adams’ filing which is perceived as improper, he should specify that purpose and modify the issue accordingly.

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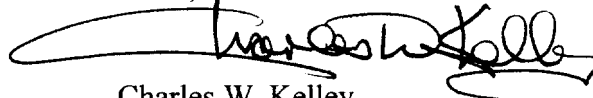
<sup>1</sup> See Section 311(d)(3) of the Communications Act of 1934, *as amended*, 47 U.S.C. § 311(d)(3). Basically, the Commission may not approve a settlement agreement involving the payment of money to a dismissing applicant if the dismissing applicant filed its application for the purpose of achieving such an agreement.

<sup>2</sup> See, e.g., James C. Sliger, 70 FCC 2d 1565, 1571 (Rev. Bd. 1979) (the threat to file or the filing of a competing application is abusive when the purpose of the threatened filing in market “A” was to have the opponent withdraw an application for a station in market “B”)

5. In any event, the Bureau submits that addition of a properly framed issue is not an error that would be likely to require remand should the appeal be deferred and raised as an exception. Indeed, even if the presiding ALJ erred in adding the issue, no remand is likely to occur because of that error. Under a properly framed issue, Adams will have the opportunity to demonstrate that its application was filed for a proper purpose, *i.e.*, the operation of a television station in Reading. If Adams succeeds, its application will receive comparative consideration, and the addition of the issue will have no impact on the ultimate outcome of this proceeding. However, if Adams fails, its application will not receive, nor will it deserve, comparative consideration. *See WWOR-TV, Inc., supra*, 6 FCC Rcd at 1526 n. 21.

6. Accordingly, while the Bureau opposes grant of Adams' Request, the Bureau also believes that the first added issue should be modified as discussed above.

Respectfully submitted,  
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Chief, Enforcement Bureau



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February 16, 2000

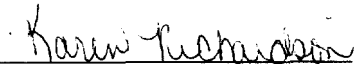
CERTIFICATE OF SERVICE

Karen Richardson, secretary of the Enforcement Bureau's Investigations and Hearings Division certifies that she has on this 16th day of February, 2000, sent by facsimile or served by hand copies of the foregoing "Enforcement Bureau's Opposition to Request for Leave to Appeal" to:

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